

REMARKS

This paper is responsive to the Office Action dated January 23, 2007. All rejections and objections of the Examiner are respectfully traversed. Reconsideration and further examination are respectfully requested.

At paragraphs 2-5 of the Office Action, the Examiner objected to the drawings as originally filed. Amendments to the Specification and Fig. 23 herein are respectfully believed to meet all requirements of the Examiner in this regard.

At paragraph 6 of the Office Action, the Examiner rejected claim 32 as being directed to non-statutory subject matter. Applicants respectfully traverse this rejection.

Applicants first respectfully note that the PTO has for years accepted claims directed to program code embodied in a carrier wave. This type of claim format is the direct outcome of published training materials used in the PTO that expressly included an example of an acceptable claim to a "computer data signal embodied in a carrier wave". In fact, the PTO has issued many patents having at least one such "propagated signal" claim ("hundreds" of such patents have been issued, according to "RESPONSE TO THE PTO REQUEST FOR COMMENTS ON PROPOSED GUIDELINES RE:SUBJECT MATTER ELIGIBILITY", submitted to the PTO by The National Association of Patent Practitioners, July 31, 2006). In reliance on these well known facts, Applicants have in this case applied for claim 32 to protect the invention in what has become a standard claim format used for computer related inventions. Applicants respectfully submit that for the Patent Office to now to promote rejection of such claims, based on interpretation of the Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility published on 22 November 2005 ("Interim Guidelines"), is an unfair reversal of a well established policy, based solely on administrative actions internal to the Patent

Office, without sufficient motivation or support in statutory or case law. No new case has been decided, or law enacted, that provides a reasonable basis for such a change in treatment of this type of claim.

Applicants respectfully assert that 35 U.S.C. 101 still does not preclude signal-related claims such as the present claim 32. 35 U.S.C. 101 states as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

The present claim 32 should at least be considered proper subject matter as a “manufacture” under 35 U.S.C. 101. Applicants respectfully disagree with the proposition espoused in the Interim Guidelines that signal claims lack physical substance. The present claim 32 is directed to “A computer data signal embodied in a carrier wave . . .”, and as such would be recognized by those skilled in the art as a *physical* signal, recognizable by a computer system, and used to convey computer program code and/or data through a computer communication network by way of a carrier wave on which it is embodied. Applicants respectfully submit that the subject matter of claim 32 is thus physically substantial, and claim 32 is therefore clearly not directed to something that would be considered physically insubstantial, such as a mere mental process or thought. As is well known in the art, the relevant physical substance of the “computer data signal” in claim 32 is the representation of the computer program it embodies, which in turn is significant to the functional operation of a receiving computer system.

In addition, the category of “manufacture” in 35 U.S.C. 101 includes no requirement that a claim be directed to a “tangible physical article or object”, as asserted in the Interim Guidelines. Such a requirement would run contrary to the Supreme Court's well known holding in *Diamond V. Chakrabarty* that the statute is intended to include “anything under the sun that is made by

man". Similarly, the Federal Circuit has held that "physical matter" is not an appropriate test for the determination of patentable subject matter. For example, *In re Lowry* 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) found eligible subject matter for an invention in which "... the stored data adopt no physical 'structure' per se. Rather, the stored data exist as a collection of bits ..."

For these reasons Applicants respectfully urge that claim 32 as it currently stands is directed to statutory subject matter under 35 U.S.C. 101.

At paragraphs 7-10 of the Office Action, the Examiner rejected claims 1, 11, 21 and 31 for anticipation under 35 U.S.C. 102, and claims 2-7, 12-17, and 22-27 for obviousness under 35 U.S.C. 103, citing U.S. patent number 7,076,043 of Curbow et al. ("Curbow et al."). Applicants respectfully traverse these rejections.

Curbow et al. disclose a delayed call dialing processing system that includes logic allowing a caller to delegate the task of monitoring presence information to detect when a callee is present to accept a call. The delayed call dialing system of Curbow et al. allows the caller to delegate the task of monitoring the delayed call and then makes the delegated task visible to the caller to enable the caller to either reschedule the delayed call or cancel the delayed call after the call has been queued for delayed dialing. When presence information indicates that the caller and the callee are available, Curbow et al. teach that the calls are put through and bridged.

In Fig. 2A, Curbow et al. show that the user accesses a buddy list or address book and can examine the status of other users. In Fig. 3, Curbow et al. show a screen display of a buddy list that maintains names of users, user's last locale information, user's devices, etc., and whether the user is active or idle. The buddy list of Fig. 3 in Curbow et al. provides presence information to the user, and helps a user tell whether another user ("buddy") is available for a phone call or not,

is in the office or elsewhere, the device they last used, whether they are currently active, and calendar information showing the current, or next scheduled appointment. Clicking on the phone icon in Fig. 3 of Curbow et al. brings up a dialog window as shown in Fig. 4 which describes the current status of a call in progress.

Nowhere in Curbow et al. is there disclosed or suggested any method or system providing information describing detected uses of communication software applications by remote computer system users to local computer system users, including:

...
obtaining, by said awareness client application process on said local computer system, responsive to said presenting said awareness object associated with said remote computer system user, communication mode activity information regarding said remote computer system user, ***wherein said communication mode activity information includes the identity of at least one asynchronous communication application used by said remote computer system user;***
detecting a selection of said awareness object associated with said remote computer user by said local computer system user; and
presenting, by said awareness client application process, said communication mode activity information regarding said remote computer system user in a display for said local computer system. (emphasis added)

as in the present independent claim 1. Independent claims 11, 21, 31 and 32 include analogous features. In contrast, the display generated by Curbow et al. shown in Fig. 3 shows only information regarding the location (reference number 310), access device (reference number 320), time since last active (reference number 330), and calendar appointment information (reference number 340) for each buddy. Nothing in Curbow et al. provides a hint of even the desirability of presenting an identity of at least one asynchronous communication application used by the remote computer system user in a display for the local computer system. In contrast, Curbow et al. disclose user applications updating the user's activity, without providing

any identity of any synchronous applications (e.g. e-mail) for display to the user in connection with display of such activity information. See column 5, lines 39-55 of Curbow et al.

For the above reasons, Applicants respectfully submit that Curbow et al. does not disclose or suggest all the features of the present independent claims 1, 11, 21, 31 and 32. Accordingly, Curbow et al. does not anticipate the present independent claims 1, 11, 21, 31 and 32 under 35 U.S.C. 102, nor does Curbow et al. render independent claims 1, 11, 21, 31 and 32 obvious under 35 U.S.C. 103. As to claims 2-7, 12-17, and 22-27, they each depend from claims 1, 11, and 21, and are respectfully believed to be patentable over Curbow et al. for at least the same reasons.

In paragraphs 11 and 12 of the Office Action, the Examiner rejected claims 8-10, 18-20 and 28-30 for obviousness under 35 U.S.C. 103, citing the combination of Curbow et al. with United States patent number 6,697,840 of Godefroid et al. ("Godefroid et al."). Applicants respectfully traverse this rejection.

Godefroid et al. disclose presence awareness initiatives implemented in a collaborative system that enables a user to set presence awareness policies, and that provides a reasonably high assurance that the system will correctly implement those policies. The collaborative presence awareness system of Godefroid et al. enables users to specify presence awareness policies, and includes tools to establish a level of assurance that the presence awareness system has the capability to implement correctly, substantially all possible presence awareness policies. The presence awareness policy specifications of Godefroid et al. are modular relative to the rest of the presence awareness system, and can be modified without having to modify computational modules or user interface program code of the presence awareness system. A user of the Godefroid et al. system can update his or her presence information. In accordance with still another aspect of the invention, the Godefroid et al. system automatically collects presence

information about the user and automatically updates his or her presence information. The presence awareness system of Godefroid et al. may use specification-based testing at run-time to monitor whether some users' presence awareness policies have inadvertently been violated, further strengthening the reliability of the system.

Godefroid et al. further disclose that a user interface sends the messages to the rest of a presence awareness system indicating login, logout, screensaver(on), and screensaver(off) events (column 5, lines 15-18).

In the Godefroid et al. system, a user may inquire about the presence of other users. These inquiries may relate to a user's interest in the login status of another user, the screen saver status of another user, whether another user is in a collaborative session, the other user's indicated willingness to interact (a "door" status), access rules and settings of the other user, and the other user's calendar, location, phone number, email address, and real name (in the case of anonymous participation). For these user activities, the Godefroid et al. user interface sends check-availability (X), check-name(X), check-chatters(X) messages to the rest of the presence awareness system, and receives available(X), unavailable(X), name(real(X), pseudo(Y)), and chatters(SID, SetOfChatters) messages from the presence awareness system, where each chat session is identified by a globally unique id "SID".

The relevant teachings of Curbow et al. are summarized above.

Nowhere in the combination of Curbow et al. and Godefroid et al. is there disclosed or suggested any method or system providing information describing detected uses of communication software applications by remote computer system users to local computer system users, including:

...

obtaining, by said awareness client application process on said local computer system, responsive to said presenting said awareness object associated with said remote computer system user, communication mode activity information regarding said remote computer system user, ***wherein said communication mode activity information includes the identity of at least one asynchronous communication application used by said remote computer system user;***

detecting a selection of said awareness object associated with said remote computer user by said local computer system user; and

presenting, by said awareness client application process, said communication mode activity information regarding said remote computer system user in a display for said local computer system. (emphasis added)

as in the present independent claim 1. Independent claims 11 and 21 include analogous features. Nothing in the combination of Curbow et al. and Godefroid et al. provides a hint of even the desirability of presenting an identity of at least one asynchronous communication application used by the remote computer system user in a display for the local computer system. In contrast, Curbow et al. disclose user applications updating the user's activity, without providing any identity of any synchronous applications (e.g. e-mail) for display to the user in connection with display of such activity information, and Godefroid et al. do not teach monitoring of any type of asynchronous communication application.

For the above reasons, Applicants respectfully submit that the combination of Curbow et al. and Godefroid et al. does not disclose or suggest all the features of the present independent claims 1, 11 and 21. Accordingly, the combination of Curbow et al. and Godefroid et al. does not render independent claims 1, 11 and 21 obvious under 35 U.S.C. 103. As to claims 8-10, 18-20, and 28-30, they each depend from claims 1, 11, and 21, and are respectfully believed to be patentable over the combination of Curbow et al. and Godefroid et al. for at least the same reasons.

Reconsideration of all claims is respectfully requested.

Applicants have made a diligent effort to place the claims in condition for allowance. However, should there remain unresolved issues that require adverse action, it is respectfully requested that the Examiner telephone Applicants' Attorney at the number listed below so that such issues may be resolved as expeditiously as possible.

For these reasons, and in view of the above amendments, this application is now considered to be in condition for allowance and such action is earnestly solicited.

Respectfully Submitted,

April 23, 2007
Date

/David A. Dagg/
David A. Dagg, Reg. No. 37,809
Attorney/Agent for Applicant(s)
McGuinness & Manaras LLP
125 Nagog Park
Acton, MA 01720
(617) 630-1131

Docket No. 260-009
Dd: 04/23/2007